

APPROVED
Minnetonka Beach Planning Commission Meeting Minutes
February 27, 2023 – 7 pm

1. Call to Order

Chair Breazeale called the meeting to order at 7:00 pm.

2. Roll Call

Present: Commissioners Anderson, Blodgett, Breazeale, Finnegan, Halverson, Steinfeld, Swanson, Wortman and Council Liaison Halverson. Absent: none. Staff in attendance: Heidi Honey, City Administrator

3. Oath of Office

Honey gave Wortman the oath of office prior to the meeting.

4. Approve Agenda

(Anderson motion, Swanson second to approve the agenda; all ayes.) Motion passed.

5. Approval of Minutes

5.1. Regular Meeting of January 23, 2023

Honey was asked to make clerical edits on pages 2, 3, 4, and 8. There was discussion about if a motion was made regarding the Planning commissioners' preferences for options 1, 2 or 3. Honey will listen to the audio and if there was a motion, she will add it to the minutes.

(Finnegan motion, Anderson second to approve the minutes with suggested edits and the caveat that Honey will go back and check if there was a motion; all ayes.) Motion passed.

6. Old Business

6.1. Code Compliance Project – Current Code Amendments – Chair Breazeale

Breazeale updated the commissioners on activity after the last Planning meeting. He met with the task force on Sunday. At the last meeting Planning voted to recommend red lining the 1996 code and not amend the current code. Breazeale thought this would take too long so he decided to search and compare the areas identified as non-compliant in the three codes, and updated code language for compliance in the 2017 code (which is in the packet). At the February 13 City Council meeting, he discussed the task force recommendation to not amend 2017 and rewrite 1996, and his concern about timing and recommendation to amend some noncompliance issues quickly. He said questions came up about the DNR's willingness to press to amend current code, and other items. Breazeale was looking for direction from Council to confirm the Planning Commission vote or for them to advocate doing quick amendments to the 2017 code while having a parallel process of rewriting based on 1996. He already completed quick amendments. After discussion, Council wanted to know how the DNR viewed amendments and did not vote on direction to the process. The task force was to meet with the DNR (Wes Saunders-Pearce) two days after the meeting and council wanted their input before giving direction. The meeting summary is in the packet. Breazeale stated what stood out was the DNR is very complimentary of the task force, their process and attention to detail. There is tremendous value in amending the code and correcting big problems. Saunders-Pearce suggested they start with big issues, he understood that rewriting the code will take a long time, many cities don't follow the DNR model ordinance, and ultimately the whole code needs to be in compliance and approved by them. Breazeale went on to say that in 2022, City Council charged Planning with getting the code in compliance with DNR. He then stated at the last council meeting nothing

changed in their direction that they are supposed to get the code in compliance and then they can look at the larger rewrite after they hear back from the DNR. It is appropriate to amend the current code. Swanson reached out to Breazeale last week and stated the task force supported amending the current code to take care of immediate issues and then determine how to go forward with a rewrite.

Breazeale discussed proposed code amendments in the packet, and his desire to amend the big issues while they work on a longer process, which the DNR understands will take longer than 12 months. He asked the task force to weigh in as he reviewed his proposed code amendments. Swanson stated the goal is a fully compliant code for Minnetonka Beach. DNR does not care how it is achieved, as long as it is done. The DNR supported quick fix amendments for major issues to get into compliance and they recognize looking at entire code is lengthy process, and they are ok with that. The task force supports this process but are still committed to a longer-term process based on the 1996 code. Breazeale then described his process of comparing the definition and rule for each issue with each version of code. The process would be to review each one, present recommendations for preliminary approval by city council, submittal to DNR for conditional approval, Planning Commission public hearing, final approval by city council, and final submittal to DNR. The DNR would prefer all amendments are submitted together instead of individually.

AREAS OF FLEXIBILITY:

1. Building Height

Breazeale and the task force recommend keeping 2017 code as written. DNR is more lenient, but their maximum height is 25' and Minnetonka Beach is 40'. The DNR approves the city's current definition of height. Swanson added there is additional clarification language in the 2017 code, and the DNR is ok with.

(Swanson motion, Anderson second with regard to Building Height: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: the city retain its existing rule and definition in the 2017 zoning code; all ayes.) Motion passed.

2. WOAS – Water Oriented Accessory Structures

Breazeale discussed specific language to be added to the 2017 code because WOAS are not mentioned in the code. To Definitions, he added "examples of such structures and facilities include equipment storage structures and pump houses." Additionally, he discussed adding 1996 language to (ii) Stairways, Lifts, and Landings, Item "7. Water Oriented Accessory Structure. The structure, if not more than four (4) feet in height and with a footprint of not more than twenty (200 square feet, may be approved by the City without a variance upon the granting of a building permit."

Mathews stated WOAS are limited to one at the lakeshore. They added "single" between "A" and "small".

(Swanson motion, Steinfeld second with regard to water oriented accessory structures (WOAS): that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the language on page 19 of 35 in the packet be accepted, in addition adding the word "single" between "A" and "small" in the first line of the definition; all ayes.) Motion passed.

3. Hardcover

DNR does not allow for pervious paver credits. Breazeale recommends that the city return to 1996 agreement and strike the current definition of Impervious Surface and replace it with the DNR model ordinance definition which lists permeable pavers as impervious. He also discussed that pervious pavers require maintenance agreements, but the city does not have resources to enforce maintenance of them as required in the code.

The flexibility granted was hardcover shall not exceed 30%. There was discussion about decks considered as hardcover because most people put tarp, rocks, gravel, or pavers under decks. Mathews stated if the city wanted to change the 30% flexibility granted, they would need to negotiate with the DNR for more flexibility. DNR would want the city to give greater restriction. Breazeale discussed getting back in compliance with DNR. If someone violates the rules, they will have to deal with that later.

Honey asked how to deal with people using credits now and improving their property later. They would have a legal nonconforming use and would need to come into conformity or request a variance.

(Steinfeld motion, Swanson second with regard to hardcover: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: use definition of DNR Model Ordinance 2.534 and edit the current code to provide as follows: Hardcover shall not exceed thirty percent (30%) of a lot or combination of adjacent lots under one ownership or Planned Unit Development; all ayes.) Motion passed.

(Steinfeld motion, Swanson second with regard to hardcover: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: remove hardcover reference in Table 3-6, Note 5 in 2017 Code; all ayes.) Motion passed.

AREAS OF GREATER RESTRICTION:

1. Lot Area

In 1996 code, minimum lot requirements are one acre and 150 ft width. In 2017 code, minimum requirements are one acre and 100 ft width. DNR requirements are 75 ft wide and .34/.23 acres. In Minnetonka Beach, 92% of lots don't conform with current lot width. Breazeale stated would be important if the Club is ever developed and recommended to amend the code to 150 ft. minimum width.

(Swanson motion, Steinfeld second with regard to lot width: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: modify current code on page 65 – 66 to specify that minimum lot width be 150 ft; all ayes.) Motion passed.

2. Lake Setbacks

DNR code is very complex but allows 75 ft setback. The 1996 code measured the AMBS and followed line of sight, which did not allow a building blocking neighbor's view and includes deck in building structure definition. The 2017 code measures an AMLS from the lake, which is line from the lake and not the neighboring structures. It is very confusing and lake contours greatly affect placement of a structure. Recommended going back to AMBS as noted in 1996 code. AMLS could result in building toward the lake.

(Steinfeld motion, Anderson second with regard to Lake Setback: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: strike the current definition of AMLS lake setback and replace it with 1996 definition and rule for AMBS as noted on pages 26 and 27 of the packet; all ayes.) Motion passed.

3. Septic Systems

(Steinfeld motion, Anderson second with regard to Septic Systems: that the Planning Commission recommends to City Council that the city seek conditional approval from the DNR on the following: to change 2017 code 3.7 (D)(3) to replace "within wetland overland district" to "Minnetonka Beach"; all ayes.) Motion passed.

Areas of greater restriction

Accessory Dwelling Units – Already amended and approved by City and DNR, September 2022

No boathouses - neither the 1996 or Current Code allow for these, recommend no edits.

No density credits for PUDs - neither the 1996 or Current Code allow for these, recommend no edits.

Breazeale stated that during this compliance research, the task force found other issues besides the 3/7 Factors needing attention such as shoreland zones and grading and filling in the shoreland zone. Breazeale noted that the model ordinance does not cover side setbacks, but it has been discussed a lot and decreasing setbacks are being allowed. City allows 6 ft with 4 ft stairways so he would like to amend that. He asked that other issues be brought up to see if they can amend them easily in this same manner.

Process for Amending Code

Breazeale stated that at the last meeting there was no motion but a vote to rewrite the code based on 1996. The commissioners have just proposed amendments to 2017 code. He stated they need to make a recommendation to city council on process. He was happy doing a dual process with parallel paths of having the task force continue their work redlining the 1996 code and doing amendments along the way and evaluating the process. The task force would like to know the process now because they don't want to work on amending the 1996 code if it is not the template in the end. Breazeale suggested focusing on and working together on content and not presenting to council to rewrite the entire code right now and decide later if the amendments will be to the 1996 code or 2017 code.

Swanson said their recommendation is to do short term amendments to get more in compliance in the short term and obtain approval for the task force to continue revising the 1996 code by overlaying the current DNR model ordinance and elements of 2017 code that are relevant. She added that many things in the 2017 code affect the short term amendments and it is difficult to find all of them. That part of the process can be on hold temporarily while they do the short-term amendments as quickly as possible. Breazeale thinks they are doing the same things of getting the content updated now. Wortman stated they want something easy to use, they have expertise willing to work on it going forward, the 2017 code brought in unnecessary items, and it is not in compliance with the DNR. She stated long term they need to take advantage of the knowledge of people who are willing to do the work.

Breazeale said you can get a code streamlined, clarified, and looking like the model ordinance by continuing to evolve it because it ends at the same point. He thinks it is easier to evolve what you currently have to that point, because the 1996 code does not cover a lot of things that need to be in it and has things not needed in it. Breazeale asked to continue to work on code updates as they are doing and wait 90 days to commit to expanding the scope to rewrite the 1996 code. Swanson stated the DNR is expecting a completely compliant code. They are in favor of doing the amendments now but are not in agreement in how to get to the final goal of an entire code that is in compliance.

Steinfeld stated everyone agrees they will finalize amendments over next few months but the task force is seeking support of revising the 1996 code and their process which is what they voted on last month.

Mathews stated the 2017 code rewrite was supposed to take the previous code which tracked the 1996 code that was updated through 2014 with some things removed from 1996 and some things added to modernize it. The 2017 code was supposed to be better organized, easier to use, modernized, updated and clarified. She stated that it is challenging to use, confusing, organized differently, does not comply with flexibility granted and restrictions promised so it does not comply with enhancements to DNR shoreland rules, and it does not comply with the shoreland rules. There are a number of areas discussed tonight that can be modified in short for the city to operate while coming into full compliance. The task force recommended the most efficient way is to use the code prior to the 2017 rewrite and update that. Take the 1996 code and make sure it is compliant and modernized appropriately. She added that it is great the Chair fixed these things in the short term so the city is operating the way it should, but to reach the goal of

full compliance, the task force recommends amending the DNR approved 1996 code to make sure it is compliant with promises made and flexibilities granted with shoreland rules and modernize it. She stated the task force supports the short-term fixes but to come into full compliance the amendments need to be made to the 1996 code. Mathews stated there has been talk about scope creep but her understanding is to provide to the DNR a code that will be adopted by the city that will be fully complaint. She would like commitment to know what it is she is working on. She stated if they are not ready to do that, the task force will take a hiatus because they don't want to work on something that is not approved or appear they are working outside the scope. They will help the Chair with amendments right now. She suggested the Planning Commission make a motion that they recommend that the city reaffirm the commitment to the 3/7 agreement to make the process easier and faster by being committed to the terms of that agreement.

Anderson asked how long it would take to amend the 1996 code. Mathews said the proposed schedule was to have the topic areas presented through August, once they get direction from Planning and Council but it would be faster if there was recommendation by Planning and direction from Council that the city wants to abide by 3/7 agreement. Mathews went on to say they anticipated a long discussion about hardcover and pervious paver credits, but Breazeale based the recommended amendment on the original agreement, and they don't have to ask the DNR for additional flexibility. Breazeale stated the topics to be covered through September were considered tonight. Mathews stated they intended to work on all of the related items with their timeline like non-conforming uses or moving hardcover. Swanson suggested it may take another year to get the redlined draft to DNR based on their time spent researching the current code and its complexity. She asked that the Planning Commission support their recommendation. Breazeale stated that he was the only one against their recommendation.

Steinfeld stated the task force has been charged with the responsibility of researching the codes and it is not fair to ask the Planning commissioners to do the work of the task force and they will learn the codes as they are presented by the task force. Breazeale thought they should all be familiar with the codes.

Breazeale asked about the difference between the 1996 and 2014 code. The task force has also been consulting the 2014 code. Mathews stated there is additional language for AMBS. The non-conforming uses is excellent in 2014 code, which was relaxed in the 2017 code, but will need clarification from the model ordinance. In 2010 the city adopted the MCWD standards and regulations for all lots in Minnetonka Beach but those were relaxed in 2017. The 2014 code looks similar to the 1996 code but there is no final version of it because of many individual amendments made. The 1996 code and DNR are similar to compare the sections and layout. Breazeale said the content is different. Anderson confirmed that the task force is willing to do what is needed if Planning and council agree to that. She said council discussed taking care of big items and then moving forward with additional edits. Mathews stated the recommendation from the task force is that council adopt that they update the DNR approved 1996 code and end up with a product that is fully compliant with shoreland rules and the 3/7 agreement, adding it is difficult and time consuming to work with the 2017 code and much easier to update the 1996 code. Wortman suggested using the DNR model ordinance as the template instead of trying to explain to council and residents that we are going back 25 years and starting there. Mathews stated the 3/7 agreement is not consistent with what was agreed upon. That can be added. Mathews stated they can follow the DNR numbering system. Swanson stated she sees a process which overlays the DNR rules with the 1996 code. The city has to show the DNR where they were in 1996 and what has changed, and the task force thinks redlining the 1996 code would be easiest to show how we are complying with their code. Breazeale stated the city can use whatever process it wants, and it does not have to redline the 1996 code. DNR wants the city to point out the changes. He said if he redlined the 1996 code, most of it would be gone except content (rules and definitions) and he thinks the DNR format is the best. Almost everything would be redlined. Breazeale recommended on deciding content first and then pick the format and he recommends the DNR format. Mathews stated it would show where changes were made, items where we are more restrictive, the 3/7

and compliance. Breazeale stated so many things are wrong with the current code, he thinks they should work together and focus on the content. Anderson stated the task force is very good and they are willing to continue working but want support. Breazeale stated he sees it as a problem to go to city council and they will see it looks like a code rewrite, which is a longer process. Swanson stated the end product may look more like the model ordinance but before embarking on that they would like to know that their efforts are supported. Mathews stated if there is commitment to support 3/7, they can start drafting. She suggested the task force take a hiatus while Planning works on the amendments to get the city operating as it should. Anything that the chair leads, the task force will assist with but won't lead the project, have weekly meetings or work 12-15 hrs. a week analyzing and updating which may impact the timeline. Mathews was concerned at the council meeting because it looked like they were going to vote to amend the 2017 code which is not the task force recommendation. Breazeale stated they can work together for a couple months on content, it may be clearer to the final product. Breazeale can't endorse going back to 1996 but he can say Planning does, or they can work on content and circle back on process. Mathews stated it is better if the Chair is 100% behind the task force with new council and mayor who have a lack of history and process of shoreland rules. Breazeale thinks if they work together, it will go faster. They will re-assess in 60 days. Steinfeld does not want to bring something to council where the commissioners voted 5 to 1 against the chair. He attended the council meeting and thought the council was uninformed of the process because there are new members, and they want to be told on what Planning unanimously agrees on. He added that council should not be in the hot seat to make a decision. They expect planning to come to consensus and he thinks they should take the time to be unanimous.

(Steinfeld motion, Anderson second that for the next 90 days the Chair and Task Force will work together and finalize the short-term amendments to the existing code and secondly get into consensus about how the rewrite will come about and then present it to the Planning Commission; all ayes.) Motion carried.

6.2. MN Shoreland Rules and City Code Task Force – previously discussed in 6.1.

6.3. 2023 Meeting Calendar Approved Dates

Mar. 20, Apr. 24, May 15, June 26, July 24, Aug. 28, Sept. 26 from 25, Oct. 23, Nov. 27, Dec. 18.

7. Reports

7.1. Chair Report – no report

7.2. Commissioner Reports – no reports

7.3. Council Liaison Halverson – Halverson summarized the council meeting discussion.

7.4. Building Permit Report – received and filed

8. ADJOURNMENT

(Anderson motion, Steinfeld second, to adjourn; all ayes.) Motion passed.

Chair Breazeale adjourned the meeting at 9:44 p.m.

PUBLIC IN ATTENDANCE – The following individuals were in attendance: Task Force Members Nell Mathews, and Susan Enlow via phone who listened but did not participate in any discussion.

Minutes respectfully submitted by City Administrator Heidi Honey

Heidi Honey, City Administrator